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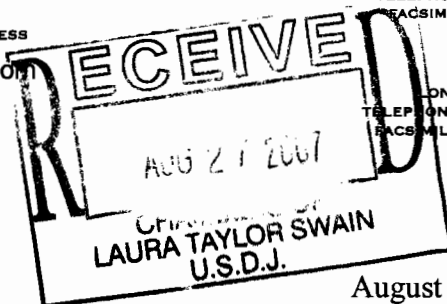
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**By Hand Delivery**

Hon. Laura T. Swain<sup>1</sup>  
Daniel Patrick Moynihan  
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New York, NY 10007

**MEMO ENDORSED**

IT IS ORDERED that counsel to whom this Memo Endorsement is sent is responsible for faxing or otherwise delivering promptly a copy to all counsel and unrepresented parties and filing a certificate of such service within 5 days from the date hereof. Do not fax such certification to Chambers.

*Milstein v. Federal Bureau of Prisons,*  
07-Civ-7434 (S.D.N.Y.)

Dear Judge Swain:

We represent Plaintiffs in the above-referenced matter, which was filed on August 21, 2007. Accompanying this letter, we are filing a Notice of Motion for Class Certification (Ex. A). We respectfully request that the Court exercise its discretion under Local Rule 7.1 and allow Plaintiffs to submit the memorandum of law and any supporting documentation at a later date, pursuant to a schedule that can be agreed to by the parties and approved by the Court.

<sup>1</sup> We have been informed by the Clerk of the Court that this matter has not yet been assigned to a judge. We are addressing this application to Your Honor as instructed by Chambers based on the fact that Your Honor presided over the prior related action, *Kelly v. Lapin*, 07-Civ-4149 (S.D.N.Y.) (LTS) (FM), and is currently serving as the Part I Judge.

I have contacted the United States Attorney's Office, which I believe will represent Defendants, but I have not yet been able to determine whether they will consent to this application. On Wednesday, August 21, 2007, we deposited a copy of the complaint with the United States Attorney's Office and effectuated service by mail upon the defendants. I also spoke to AUSA Brian Feldman (who represented the defendants in an earlier related matter) on Tuesday, August 22, 2007, about our application. However, Mr. Feldman explained to me that he did not know who was handling this matter, but that he will forward my request to the appropriate individuals. I will inform the Court of their response as soon as I receive it.

Plaintiffs' complaint (Ex. B) is brought as a class action on behalf of federal inmates that rely on chapel libraries for religious books and media against the Federal Bureau of Prisons ("BOP") and certain of its officers and agents in their official capacities. Plaintiffs Milstein and Okon seek declaratory and injunctive relief with respect to the so-called Standardized Chapel Library Project, under which Defendants have banned and removed religious materials from prison chapel libraries.

Plaintiffs are filing the notice of motion for class certification seeking certification of the putative class, which is defined in part as: "All persons who are or will be incarcerated in any BOP prison or detention center and who use an institutional chapel library that is subject to the Standardized Chapel Library Project." However, Plaintiffs believe that submission of briefs and supporting declarations are best left for a later date, after appropriate discovery and an opportunity to narrow the issues through discussions with Defendants. Additionally, we anticipate that at least one additional named plaintiff will join this action in the near future, and we believe that it would be more efficient to fully brief class certification issues after all the named plaintiffs have joined.

Nonetheless, Plaintiffs are compelled to move for class certification at this point because of their approaching release dates and the risk that their release could cause this matter to evade review on the merits. In fact, Plaintiff Milstein is currently scheduled to be released next Tuesday, August 28, 2007. However, as the courts have recognized, even after a named plaintiff is released a class action for declaratory and injunctive relief is not mooted if the court ultimately certifies the class. *United States Parole Comm'n v. Geraghty*, 445 U.S. 388 (1980); *Comer v. Cisneros*, 37 F.3d 775, 798-99 (2d Cir. 1994).<sup>2</sup>

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<sup>2</sup> The certification of a class will relate back to the filing of the complaint in such cases. See *Comer v. Cisneros*, 37 F.3d 775, 798-99 (2d Cir. 1994) ("[U]nder the appropriate circumstances, class certification may relate back to the filing of the complaint."). Indeed, some courts have allowed class actions to be maintained even if named plaintiffs' individual actions were mooted prior to their motion for class certification. See *In re Nat'l Australian Bank Sec. Litig.*, 2006 WL 3844463, \*2-3 (S.D.N.Y. Nov. 8, 2006) (discussing the exception to mootness when the named plaintiff "has not yet

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Accordingly, we respectfully request that the Court allow the briefs and other documents in support of our motion for class certification to be submitted at a later point.

Respectfully submitted,




Solomon N. Klein

Cc: AUSA Brian Feldman (by Fax)  
AUSA James Cott, Chief Civil Division (by Fax)

The named plaintiffs in this action were also named plaintiffs in Kelly v. Lapin, 07 Civ 4149 (LTS) (FM), which was voluntarily dismissed in light of the incomplete status of the prison grievance process with respect to the matters at issue. The instant application to accept an incomplete and admittedly premature class certification motion appears to be an effort to bypass altogether the PLRA's exhaustion requirements. The application is denied without prejudice to later, timely and complete, motion practice on the issue. Docket entry #3 is hereby terminated.

**SO ORDERED.**

 8/27/2007  
LAURA TAYLOR SWAIN  
UNITED STATES DISTRICT JUDGE Part I

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had a reasonable opportunity to move for class certification"); *Eckert v. Equitable Life Assur. Soc.*, 227 F.R.D. 60, 63-64 (E.D.N.Y. 2005). Plaintiffs, nonetheless, are filing their motion for class certification prior to their release in an abundance of caution.